

APPEAL NO. 171843
FILED OCTOBER 11, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 13, 2017, with the record closing on July 6, 2017, in (city), Texas, with (administrative law judge (ALJ)) presiding as (ALJ).¹ The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury 1), extends to a central disc protrusion at L3-4 and a central disc protrusion at L4-5 with nerve root impingement; (2) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on July 23, 2015; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant had disability resulting from the compensable injury beginning on (date of injury 2), and continuing through the date of the CCH.

The appellant/cross-respondent (carrier) appeals the ALJ's determinations concerning extent of the compensable injury and disability as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

The claimant appeals the ALJ's determination regarding the issues of MMI and IR as being legally in error and contrary to the evidence.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant sustained a compensable injury on (date of injury 1), when she slipped and fell down some stairs. The parties stipulated, in part, that the compensable injury extends to a lumbar strain, lumbar contusion, and coccydynia.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury 1), extends to a central disc protrusion at L3-4 and a central disc protrusion at L4-5 with nerve root impingement is supported by sufficient evidence and is affirmed. The fact that another fact finder may have drawn different inferences from the evidence which would have supported a different result does not provide a basis for us to disturb the challenged determination. *Salazar v. Hill*, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi, 1977, writ ref'd n.r.e.).

¹ Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

MMI/IR

The ALJ's determination that the claimant reached MMI on July 23, 2015, with an IR of five percent is supported by sufficient evidence and is affirmed.

DISABILITY

Disability is an economic concept defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. The ALJ determined that the claimant has had disability resulting from the compensable injury of (date of injury 1), from (date of injury 2), through the date of the CCH, April 13, 2017. At the CCH, the claimant testified that she continued to work with restrictions from the date of the injury until November 28, 2015, and that she has not worked thereafter; however, there is no evidence in the record concerning the claimant's earnings during the period beginning (date of injury 2) through November 28, 2015, when the claimant ceased working. The ALJ's determination that the compensable injury was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wages for the period beginning on (date of injury 2), and continuing through November 28, 2015, is against the great weight and preponderance of the evidence as there is no evidence in the record that the wages earned by the claimant during this period were not equivalent to her pre-injury wage.

We accordingly reverse the ALJ's decision that the claimant had disability resulting from the compensable injury beginning on (date of injury 2), and continuing through November 28, 2015, and render a new decision that the claimant did not have disability resulting from the compensable injury beginning on (date of injury 2), and continuing through November 28, 2015.

The ALJ's determination that the claimant had disability resulting from the compensable injury beginning on November 29, 2015, and continuing through the date of the CCH is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury 1), extends to a central disc protrusion at L3-4 and a central disc protrusion at L4-5 with nerve root impingement.

We affirm the ALJ's determinations that the claimant reached MMI on July 23, 2015, and that the claimant's IR is five percent.

We reverse the ALJ's determination that the claimant had disability resulting from the compensable injury beginning on (date of injury 2), and continuing through November 28, 2015, and render a new decision that the claimant did not have disability resulting from the compensable injury beginning on (date of injury 2), and continuing through November 28, 2015.

We affirm the ALJ's determination that the claimant had disability resulting from the compensable injury beginning on November 29, 2015, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge